

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
WASHINGTON, DC

JOHNS MANVILLE CORPORATION

Case No. 08-CA-270764

and

INTERNATIONAL BROTHERHOOD OF TEAMSTERS
LOCAL UNION NO. 20

Kelly Freeman, Esq.,
for the General Counsel.
Ruth L. Goodboe, Esq.,
for the Respondent.
John R. Doll, Esq.
for the Charging Party.

DECISION

STATEMENT OF THE CASE

CHRISTINE E. DIBBLE, Administrative Law Judge. This case was tried, by agreement of the parties, using Zoom technology on July 12, 2021. The International Brotherhood of Teamsters, Local Union No. 20 (the Union/Charging Party) filed charge case number 08-CA-270764 on December 29, 2020.¹ (GC Exh. 1(a).)² The General Counsel issued the complaint and notice of hearing for case 08-CA-270764 on April 15, 2021. (GC Exh. 1(c).) Johns Manville Corporation (Respondent) filed a timely answer to the complaint denying all material allegations. (GC Exh. 1(e).)

The complaint alleges that since about September 18, Respondent has failed and refused to furnish the Union with (a) copies of the contract between Global One Distribution or Global Distribution Center, Maumee Assembly and Respondent or any of its parents, affiliates,

¹ All dates are in 2020, unless otherwise indicated.

² Abbreviations used in this decision are as follows: “Tr.” for transcript; “GC Exh.” for General Counsel’s exhibit; “R. Exh.” for Respondent’s exhibit; “CP Exh.” for Charging Party’s exhibit; “ALJ Exh.” for administrative law judge’s exhibit; “Jt. Exh.” for joint exhibit; “GC Br.” for General Counsel’s brief; “R. Br.” for Respondent’s brief; and “CP Br.” for Charging Party’s brief. My findings and conclusions, including my credibility determinations, are based on my review and consideration of the entire record.

subsidiaries, or divisions for the work being performed at Global One Distribution or Global Distribution Center and Maumee Assembly; and (b) copies of all correspondence, including electronic correspondence, between or among hourly and management personnel at Respondent, Global One Distribution or Global Distribution Center and Maumee Assembly that deal with, concern or are related to the work being performed by Global One Distribution or Global Distribution Center and Maumee Assembly.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel, Respondent, and the Charging Party, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent is a Delaware corporation engaged in the manufacture of building products, with offices and places of business located in Waterville and Maumee, Ohio. Respondent purchases and receives at its Waterville, Ohio facility goods valued in excess of \$50,000 directly from points outside the State of Ohio. I find, and Respondent admits, that at all material times, it has been an employer engaged in commerce within the meaning of sections 2(2), (6), and (7) of the Act.

At all material times the Union has been labor organizations within the meaning of section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. STIPULATIONS

The following joint stipulations from the General Counsel and Respondent were accepted into evidence:

1. Lauren Polk works for Respondent in the position of in-house counsel and is Respondent's agent within the meaning of Section 2(13) of the National Labor Relations Act (Act) for purposes of communicating with the Union. Ms. Polk held this position on September 23, 2020.

2. Since at least September 29, 2020, Ruthie Goodboe, an attorney, has been retained by the Respondent, in part, to respond to the Union's July 31, 2020, information request on behalf of the Respondent and served as the Respondent's agent within the meaning of Section 2(13) of the Act for this purpose.

3. Since at least September 23, 2020, John Doll, an attorney, has been retained by the Union, in part, for purposes of communicating with Respondent regarding the Union's July 31, 2020, information request on the Union's behalf and served as the Union's agent within the meaning of Section 2(13) of the Act for this purpose.

4. Joint Exhibit 1 is a true and accurate copy of the collective-bargaining agreement between Respondent and the Union, which has effective dates of August 1, 2019, to April 19, 2024.
5. Joint Exhibit 2 is a true and accurate copy of grievance 165042, filed by bargaining unit employee Ramon LaBiche on July 3, 2020.
6. Joint Exhibit 3 is a true and accurate copy of the July 31, 2020, information request sent by the Union's Vice President and Business Representative Paul Konwinski to Respondent's Human Resources Manager Tom Sampson. Sampson received this letter.
7. Joint Exhibit 4 is a true and accurate copy of Respondent's September 18, 2020, response to the Union's July 31, 2020, information request, sent by Respondent's Complex Human Resources Manager Gail Threet to the Union's Vice President and Business Representative Paul Konwinski. This letter was received by Konwinski.
8. Joint Exhibit 5 is a true and accurate copy of a September 23, 2020, letter sent by Jon Doll to Lauren Polk. This letter was received by Lauren Polk by electronic mail.
9. On September 30, 2020, Respondent's attorney Ruthie Goodboe spoke with the Union's attorney John Doll by telephone. During this call, Doll asserted the Union required the information requested in its July 31, 2020, letter to determine if the parties' collective bargaining agreement was applicable to Maumee Assembly and Global One Distribution or Global Distribution Center, LLC.
10. Joint Exhibit 6 are true and accurate copies of emails exchanged between Respondent attorney's, Ruthie Goodboe, and the Union's attorney, John Doll, between September 29, 2020, and October 12, 2020.
11. Joint Exhibit 7 is a true and accurate copy of an October 9, 2020, letter sent by Respondent's attorney, Ruthie Goodboe, and the Union's attorney, John Doll. This letter was received by John Doll by electronic mail and first-class United States mail.
12. Joint Exhibit 8 are true and accurate copies of emails exchanged between the Respondent's attorney, Ruthie Goodboe, and the Union's attorney, John Doll, between September 29, 2020, and November 1, 2020.
13. Joint Exhibit 9 are true and accurate copies of an October 21, 2020, email and attached documents sent by Respondent's attorney, Ruthie Goodboe, to the Union's attorney, John Doll. John Doll received this email.

B. OVERVIEW OF RESPONDENT'S OPERATION

Respondent has 27 to 30 facilities in North America and operates three facilities in Ohio.³ Its Ohio operation comprises plant 1 and plant 7 located in Waterville, Ohio, and the Kingsbury warehouse located in Maumee, Ohio. Plant 1 and plant 7 also have warehouses on the premises. The three facilities are within five miles of each other. Fiberglass reinforcements for household goods and automotive applications are produced at plant 1. Shipping and receiving and some warehousing are also performed at the warehouse. Plant 7 manufactures reinforcement products, hospital-grade filtration fibers, heat-resistant materials fiber, glass fiber, and melts marbles. Plant 7 uses its warehouse for shipping and receiving product, and storage. The Kingsbury warehouse is used for “warehousing, shipping, receiving, storage of materials.” (Tr. 27.) Approximately 20 bargaining unit employees work at the Kingsbury warehouse. Each of the three locations employs bargaining unit workers as checker drivers and shift leaders who, among other duties, load and unload product from tractor trailers, complete and organize paperwork, and move product within the warehouses. In addition to the facilities in Waterville, Respondent utilizes a warehouse named 920 Illinois Avenue but referred to by the parties as “Maumee Assembly”. (Jt. Exh. 9 p. 2–5.)

C. Collective-Bargaining Agreement

The Union and Respondent have entered into successive collective-bargaining agreements (CBA) since about 1970. The current CBA is effective August 1, 2019 to April 19, 2024. Article III of the CBA governs the recognition of the Union as the exclusive representative of all production and maintenance employees and defines what constitutes an appropriate unit for purposes of collective bargaining within the meaning of Section 9(b) of the Act. It reads in relevant part:

The Company hereby recognizes the Union as the exclusive representative of all production and maintenance employees of the employer in Waterville, Ohio, but excluding all office clerical employees, watchmen, plant guards, machinists, electricians, welders and related apprentices and professional employees and supervisors as defined for the purposes of collective bargaining with respect to wages, hours of work and other conditions of employment as set forth in this Agreement. It is understood and agreed that the foregoing is applicable to existing facilities, normal expansion to those facilities, and to any and all operations including the designation of any new Fiber Glass Plants at Waterville, Ohio, as an accretion to this Agreement and Bargaining Unit.

(Jt. Exh. 1, p. 6.) The CBA lists specific “Class A and Class B” jobs, with pay rates, that are included as part of the bargaining unit. (Tr. 33–34; Jt. 1, p. 44–46.) The warehouse Class A positions of checker driver and warehouse shift leader are also listed. The current CBA between the parties covers production and maintenance employees at plant 1, plant 7, and the Kingsbury warehouse.

³ Respondent is owned by the Berkshire Hathaway Company. (Tr. 67.)

Since January 2019, Paul Konwinski (Konwinski) has been the vice president and business representative for the Union.⁴ He oversees the daily operations of the local, including contract negotiations and their enforcement and the local's business agents.

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D. Grievance Leading to Request for Information

On or about January 16, 2009, the Ohio Office of Secretary of State certified receipt of the Articles of Organization for the company 920 Illinois Avenue, LLC, also known as Maumee Assembly and Stamping (Maumee Assembly). David W. Zoll is listed as the agent for the business. On or about July 18, 2016, the Articles of Organization for Global Distribution Center, LLC (GBC) were filed with the Ohio Office of Secretary of State and became effective. The purpose of GBC is listed as “[w]arehousing, distribution and all other legal purposes.” (Jt. Exh. 9, p. 7.) Both Maumee and GBC have multi-tenant warehouse facilities located in Maumee and Perrysburg, Ohio, respectively. (GC Exhs. 2–5; Jt. Exh. 9; Tr. 65.)

In about 2015, Respondent notified Konwinski, “the committee”, and the business agent at the time, Jay Martin (Martin), that it would store product at Maumee Assembly. The Union did not file a grievance over the action because it was the Union’s understanding that “the material was only being stored at Maumee Assembly and Stamping and then making its way back to the Kingsbury warehouse.” (GC Br. 3; Tr. 35–36.) In 2020, Respondent also started using a GBC warehouse for storage. Both Maumee and GBC use third-party labor in their warehouses.

On July 3, Ramon LaBiche (LaBiche), a checker driver, filed a grievance charging that since 2015, Respondent had been using nonbargaining unit employees at the Maumee warehouse; and since 2020 had been using nonbargaining unit workers at the GBC warehouse “to handle and store” Respondent’s products. (Jt. Exh. 2.) According to the grievance, the parties’ CBA required Respondent use bargaining unit workers to “handle and store” Respondent’s product at third-party warehouses. Id. Prior to the step-three grievance meeting, LaBiche showed Konwinski copies of bills of lading to prove his point that Respondent was shipping product directly from Maumee and GBC. (Tr. 37–41; GC Exh. 2–5.) Consequently, the Union, through Konwinski, was concerned that Respondent was not only storing materials at the third-party warehouse but also shipping products directly from them using nonbargaining unit employees in violation of the CBA. (Tr. 43–44.) Based in part on Konwinski’s interpretation of the CBA, the Union believed product Respondent stored at Maumee or GBC should first be transported to the Kingsbury warehouse for bargaining unit workers to then send to its customers. As part of his investigation into LaBiche’s allegations, Konwinski went to the GBC warehouse and saw Respondent’s products through the open bay warehouse doors. Although he was denied entry, a man inside the GBC warehouse told him that material was stored there and then sent to a building across the street for shipping. (Tr. 49–50.) Konwinski also went to the Maumee warehouse to verify LaBiche’s claims but was not allowed inside because he did not

⁴ Konwinski was employed by Respondent from March 1991 to October 2017. During his tenure with Respondent, Konwinski was qualified in every position, except two, in the direct melt department. Further, as a bargaining unit employee for Respondent, Konwinski also served as the Union’s committeeman-at-large, unit secretary, and chief steward. (Tr. 23.)

have the “proper credentials.” (Tr. 49.) Based on these observations and the documents he received from LaBiche, Konwinski decided he needed more information from Respondent, so he filed the request for information at issue.

5 E. Union’s RFI: July 31, 2020

By letter dated July 31, Konwinski sent Respondent’s human resources manager, Tom Sampson (Sampson), a request for the following information:

10 I am requesting the contracts between Global One Distribution, Maumee Assembly and Johns Manville or any of its parents, affiliates, subsidiaries or divisions for the work being performed at Global One Distribution and Maumee Assembly.

15 I am also requesting copies of all correspondence, including electronic correspondence, between or among hourly or management personnel at Johns Manville, Global One Distribution and Maumee Assembly that deal with, concern or are related to the work being performed by Global One Distribution and Maumee Assembly.

20 (Jt Exh. 3.) Konwinski felt that he needed the information to aid in LaBiche’s grievance on the issue. By correspondence dated September 18, Gail Threet (Threet), Respondent’s human resources manager, responded to the Union’s request for information. Threet wrote in part,

25 The company objects to these requests as they seek information and documents related to non-bargaining unit/non-Johns Manville employees and operations. Therefore, the information sought is not relevant to the Union’s role as bargaining representative or the collective bargaining agreement to which the Company is a party. Unless and until the Union establishes the relevance of the information
30 requested through objective evidence, the Company is relieved of its obligation to provide information and documents related to non-bargaining unit/non-Johns Manville employees operations.

35 (Jt. Exh. 4.) Consequently, on September 23, John Doll (Doll), attorney for the Union, sent a letter to Respondent’s in-house counsel, Lauren Polk (Polk) expounding on the reasons why the requested information is relevant to the Union’s role as the exclusive bargaining representative of its members and Respondent’s obligation to produce the requested information. Doll writes in part,

40 . . . the information requested by Local 20 is relevant to the collective bargaining agreement to which the Company is a party, specifically Article III, Section 4 of the collective bargaining agreement.

45 (Jt. Exh. 5.) In an attempt to resolve the grievance and information request, legal representatives for the Union and Respondent exchanged several emails between September 29 and October 12. On September 29, Ruthie Goodboe (Goodboe), Respondent’s counsel, reached out to Doll to introduce herself and asked to schedule a time for them to talk. (Jt. Exh. 6.) As stipulated to by

the parties, on September 30, Goodboe spoke with Doll on the telephone. “During this call, Doll asserted the Union required the information requested in it July 31, 2020 letter (Jt. Ex.3) to determine if the parties’ collective bargaining agreement was applicable to Maumee Assembly and Global One Distribution or Global Distribution Center, LLC.” (Jt. Exh. 10.)

Goodboe again contacted Doll via letter dated October 9, setting forth Respondent’s position that the Union’s request for information was not relevant “to the administration of the CBA or the Union’s representational role.” (Jt. Exh. 7.) In response to Goodboe’s letter to him, on October 12, Doll emailed Goodboe objecting to Respondent interpretation of Article III, Section 4 of the CBA and noting “[s]ince there appears to be a dispute as to the interpretation of Article III, Section 4, the grievance procedure is [the] agreed upon method to resolve this dispute under Section 84 of the collective bargaining agreement. Since the requested information is related to this interpretation dispute, the *Shoppers Food Warehouse*⁵ case as well as may (sic) other Board cases support the Unions (sic) position that the requested information is relevant and necessary.” (Jt. Exh. 8.) In an email dated October 21, Goodboe responded by reiterating Respondent’s stance that the CBA limits recognition to Waterville, Ohio and because neither Global nor Maumee are in Waterville, the CBA does not apply to those locations. She did, however, provide Doll with publicly available information confirming “no common ownership between the two warehouses and Johns Manville.” Id. Goodboe attached the Articles of Organization for the two warehouses and website links to a couple of articles that purportedly show the warehouses are not owned by Respondent. (Jt. Exhs. 8, 9.) Respondent has not produced the requested information.

III. DISCUSSION AND ANALYSIS

Section 8(a) (5) of the Act mandates that an employer must provide a union with relevant information that is necessary for the proper performance of its duties as the exclusive bargaining representative. *NLRB v. Truitt Mfg. Co.* 351 U.S. 149, 153 (1956); *Detroit Edison Co. v. NLRB*, 440 U.S. 301, 303 (1979). “. . . [T]he duty to bargain unquestionably extends beyond the period of contract negotiations and applies to labor-management relations during the term of an agreement.” *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 436 (1967). Information requests regarding bargaining unit employees’ terms and conditions of employment are “presumptively relevant” and must be provided. *Whitesell Corp.*, 352 NLRB 1196, 1197 (2008), adopted by a three-member Board, 355 NLRB 649 (2010), *enfd.* 638 F.3d 883 (8th Cir. 2011); *Southern California Gas Co.*, 344 NLRB 231, 235 (2005). If the requested information is not directly related to the bargaining unit, the information is not presumptively relevant, and the requesting party has the burden of establishing the relevance of the requested material. *Disneyland Park and Disney’s California Adventure (Disneyland Park)*, 350 NLRB 1256, 1257 (2007); *Earthgrains Co.*, 349 NLRB 389 (2007).

The standard for establishing relevancy is the liberal, “discovery-type standard.” *Alcan Rolled Products*, 358 NLRB 37, 40 (2012), citing and quoting applicable authorities. In *Leland Stanford Junior University*, 307 NLRB 75, 80 (1992), the Board summarized its application of the principles as follows:

⁵ 315 NLRB 258, 259 (1994).

[T]he Board has long held that Section 8(a)(5) of the Act obligates an employer to furnish requested information which is potentially relevant to the processing of grievances. An actual grievance need not be pending nor must the requested information clearly dispose of the grievance. It is sufficient if the requested information is potentially relevant to a determination as to the merits of a grievance or an evaluation as to whether a grievance should be pursued. *United Technologies Corp.*, 274 NLRB 504 (1985); *TRW, Inc.*, 202 NLRB 729, 731 (1973).

The requested information does not have to be dispositive of the issue for which it is sought, but only has to have some relation to it. *Pennsylvania Power & Light Co.*, 301 NLRB 1104, 1104–1105 (1991). The Board has also held that a union may make a request for information in writing or orally; and a delay is unreasonable when the information requested is easily and readily accessible from an employer’s files. *Bundy Corp.*, 292 NLRB 671, 672 (1989).

1. The requested information is relevant and necessary to the Union’s representational role in the grievance process and enforcing the CBA

The General Counsel contends that objective evidence and a union official’s personal observation that Respondent was storing and shipping goods from both warehouses are sufficient to establish that the requested information is relevant to “processing the grievance and ascertaining whether bargaining unit work had been subcontracted or the contractual recognition clause was otherwise violated.” (R. Br. 8.) Moreover, the General Counsel argues that the contracts between Respondent and the third-party warehouses (GBC and Maumee) and other correspondence are relevant because the information could reveal the entities’ business relationship and “whether Respondent had simply leased space from them or actually had expanded its own operations into the space.” *Id.* Last, the General Counsel points to the similarities in the facts in this case to those in *Postal Service*⁶ where the Board held that the requested information was necessary “in order for the Union to determine whether it had a right to invoke the provision in its collective-bargaining agreement with the Respondent concerning bargaining over the Respondent’s potential outsourcing initiatives.”

Respondent counters that the Union (1) failed to state a legitimate basis for the requested information; and (2) the requested contracts are not needed to determine if there has been a violation of the CBA. Respondent cites *Conn. Yankee Atomic Power Co.*⁷ to support its argument that the Union is not entitled to the requested information because it “has presented no evidence it actually lost work due to Respondent’s contractual relationships” with GBC and Maumee. (R. Br. 12.)

Based on the record, I find that the Union articulated legitimate reasons for the requested information: to evaluate and investigate the grievance allegations, prepare for the grievance process that was initiated by LaBiche, and ensure Respondent’s compliance with the recognition clause of the CBA. Respondent argues that the Union’s articulated need for the requested information is based on nothing more than “unsupported assertions” and “mere suspicion” that Respondent used non-bargaining unit employees to perform work at GBC and Maumee. I,

⁶ 364 NLRB No. 27 (2016).

⁷ 317 NLRB 1266, 1266 (1995).

however, reject Respondent's contention on this point. The evidence established that Konwinski did not take at face value LaBiche's allegation that Respondent was using non-bargaining unit workers at the third-party warehouses. Rather, Konwinski went to GBC where he personally observed Respondent's product at the facility and spoke with a man inside the warehouse who told him Respondent's product was stored there then sent to a building across the street for shipment, presumably by nonbargaining unit employees. Moreover, LaBiche showed Konwinski copies of bills of lading to corroborate his charge that Respondent was shipping products directly from GBC and Maumee in contravention of the CBA. Although he was unable to see into or access Maumee, Konwinski assumed, based on documents LaBiche provided, the same activity was occurring there as it was at GBC. Based on the foregoing, I find that the Union's articulated reasons for the requested information is based on more than "unsupported assertions" and "mere speculation."

Respondent also argues that the requested information is not relevant and necessary for the Union to perform its representational role. In support of its argument Respondent contends: (1) the requested information is not relevant because it "relates to agreements with entities not covered by the CBA and involve employees not included in the bargaining unit;" (2) since GBC and Maumee and their employees are not covered by the CBA, the Union's representational duties are not implicated; and (3) the "factfinder needs only to review the provisions of the CBA, not the contracts with the Third-Party Warehouses or Respondent's correspondence with third-party entities." (R. Br. 8, 14.)

Based on the record, I find that the requested information is relevant and necessary for the Union to perform its duties as the exclusive collective-bargaining representative of the employees. Board law supports a finding that the Union is entitled to the information at issue to determine if it is prudent and appropriate to file and proceed with a grievance. *Ohio Power*, 216 NLRB 987 (1975). In *Leland Stanford Junior University*, 307 NLRB 75, 80 (1992), the Board summarized its application of the principles as:

[T]he Board has long held that Section 8(a)(5) of the Act obligates an employer to furnish requested information which is potentially relevant to the processing of grievances. An actual grievance need not be pending, nor must the requested information clearly dispose of the grievance. It is sufficient if the requested information is potentially relevant to a determination as to the merits of a grievance or an evaluation as to whether a grievance should be pursued. *United Technologies Corp.*, 274 NLRB 504 (1985); *TRW, Inc.*, 202 NLRB 729, 731 (1973); *Beth Abraham Health Services*, 332 NLRB 1234, 1234 (2000).

Respondent first claims that since the contracts between the third-party warehouses and Respondent relate to non-bargaining unit employees and entities not covered by the CBA, the information is not relevant. According to Respondent's reasoning, the contracts and other correspondence, therefore, cannot be relevant to the Union's representational duties because neither the third-party warehouses nor those employed by the warehouses are part of a bargaining unit covered by the CBA. I do not find Respondent's argument persuasive. It is precisely because Respondent might be, through the third-party warehouses, using non-bargaining unit employees to perform work normally performed by bargaining unit workers that gives the Union a legitimate reason to be concerned that Respondent is using these third-party

warehouses to circumvent provisions of the CBA which reserves certain job functions for bargaining unit employees. The CBA contains language that warehouse work is reserved for bargaining unit employees and that expansion of Respondent's facilities is covered by the CBA. In requesting the information, the union is seeking to protect its members from being denied

work that may rightfully be theirs under the agreement. The information sought would reveal the type of work Respondent moved to GBC and Maumee and the extent of Respondent's business relationship with them. None of the information Respondent provided (the articles of organization for both warehouses, and links to articles about the opening of the facilities with the names of the "owners") discloses the types work Respondent moved to the warehouses.

Likewise, the articles of organization do not reveal whether Respondent has a financial or other interest in the warehouses. The information would be relevant in helping the Union to establish if Respondent hid its financial interest in those warehouses to hide an unlawful transfer of bargaining unit work to GBC and, or Maumee in violation of the CBA.

I also reject Respondent's argument that I, as the factfinder, need only review the provisions of the CBA for insight into whether Respondent is allowed to use non-bargaining unit workers to ship its product directly from GBC and Maumee. To bolster its argument, Respondent claims the publicly available information it gave the Union sufficiently established it has no ownership in the third-party warehouses; and its admission that it uses the warehouses to store goods shows its intent is not in dispute. (R. Br. 14 -15.) However, Board precedent has established that it is the Union and not the employer who determines what information it finds useful. See, *FirstEnergy Generation, LLC.*, 362 NLRB 630, 636 (20215). Moreover, I have already found that the publicly available information Respondent gave the Union failed to sufficiently address the Respondent's possible financial or other interest in GBC and Maumee. The article named the warehouses "owners" without objective evidence to support it. Respondent's admission that it uses the warehouse to store goods does not answer the Union's question of whether those goods are being shipped directly from the warehouses to customers using nonbargaining unit employees in violation of the CBA.

Respondent also argues that the requested information is not relevant because there is no evidence the union lost work, citing *Conn. Yankee Atomic Power Co.* to support its argument. I find, however, that the facts in that case are distinguishable from those in this matter. In *Conn. Yankee Atomic Power Co.*, the union explicitly made clear that a reason for requesting the contract was to ascertain, as the union suspected, whether the employer and contractor were in actuality a joint employer. The record in this case does not show that the Union ever posited this as a reason for requesting the information. Rather, the Union was challenging Respondent's narrow interpretation of the CBA's recognition clause as limiting its terms to the Waterville location. Moreover, the CBA in *Conn. Yankee Atomic Power Co.*, specifically allowed the employer to subcontract work to an outage contractor unless there would be a loss of work or loss of opportunity for permanent promotion for unit employees. Unlike *Conn. Yankee Atomic Power Co.*, in this case, the CBA appears to be silent on the issue.

Second, the Board has consistently held that the Union has a vested interest in monitoring the contract to ensure the employer remains in compliance. *Purple Commc'ns, Inc.*, 370 NLRB No. 26 (2020) ("a requesting union is entitled to data requested in order to properly administer and police a collective-bargaining agreement"); *Oil, Chemical & Atomic Workers Local Union No. 6-418 v. NLRB*, 711 F.2d 348, 358 (D.C. Cir. 1983) (it is necessary for an employer to furnish

relevant data for a union to properly administer and police a collective-bargaining agreement); *Proctor & Gamble Mfg. Co. v. NLRB*, 603 F.2d 1310 (8th Cir. 1979) (obligation to bargain in good faith includes furnishing information to a Union during the administering and policing of a contract); *J. I. Case Co. v. Nat'l Lab. Rels. Bd.*, 253 F.2d 149, 153 (7th Cir. 1958) ("the Union not only has the duty to negotiate collective bargaining agreements but also the statutory obligation to police and administer the existing agreements"); *Westinghouse Elec. Corp.*, 239 NLRB 106, 108 (1978) (request for race and sex data is a legitimate effort by the Union to monitor and police the terms of the collective-bargaining agreement). The union is empowered by the Act with enforcing Respondent's obligations under the CBA through the grievance process or any other legal means. Consequently, a copy of the contract and correspondence between Respondent and the warehouses (GBC and Maumee) is relevant in the Union's attempt to discern whether Respondent has subcontracted bargaining unit work in violation of the CBA. See *Finch, Pruyn & Co.*, 349 NLRB 270, 275 – 277 (2007), *enfd.* 296 Fed. Appx. 83 (D.C. Cir. 2008).

Accordingly, I find that Respondent's failure to provide the information requested violates Section 8(a)(1) and (5) of the Act.

CONCLUSIONS OF LAW

1. The Respondent, Johns Manville Corporation, is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union, the International Brotherhood of Teamsters, Local Union No. 20, is a labor organization within the meaning of Section 2(5) of the Act.

3. By its failure and refusal to provide the necessary and relevant information requested by the Union on or about July 31, 2020, Respondent has engaged in an unfair labor practice in violation of Section 8(a)(1) and (5) of the Act.

4. The above unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

5. The Respondent has not violated the Act except as set forth above.

REMEDY

Having found that Respondent has engaged in certain unfair labor practices, I shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

Respondent will be ordered to produce the requested and relevant information, and post and communicate by electronic post to employees the attached Appendix and notice.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁸

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ORDER

Respondent, a Delaware corporation with office and places of business located in Waterville and Maumee, Ohio, its officers, agents, successors, and assigns, shall

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1. Cease and desist from

(a) Refusing to bargain collectively with the Union by failing and refusing to provide the Union with requested information that is necessary and relevant to its role as the exclusive representative of the employees in following unit:

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The Company hereby recognizes the Union as the exclusive representative of all production and maintenance employees of the employer in Waterville, Ohio, but excluding all office clerical employees, watchmen, plant guards, machinists, electricians, welders and related apprentices and professional employees and supervisors as defined for the purposes of collective bargaining with respect to wages, hours of work and other conditions of employment as set forth in this Agreement. It is understood and agreed that the foregoing is applicable to existing facilities, normal expansion to those facilities, and to any and all operations including the designation of any new Fiber Glass Plants at Waterville, Ohio, as an accretion to this Agreement and Bargaining Unit.

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(b) In any like or related manner, interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed to them by Section 7 of the Act.

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2. Take the following affirmative action necessary to effectuate the purposes and policies of the Act.

(a) Within 14 days from the date of the Board's Order, furnish the Union with all information it has requested since on or about July 31, 2020.

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(b) Within 14 days after service by the Region, post at its facilities in Waterville and Maumee, Ohio, copies of the attached notice marked "Appendix."⁹ Copies of the notice, on forms provided by the Regional Director for Region 8, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive

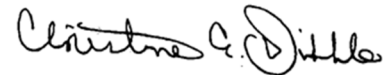
⁸ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

⁹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

days in conspicuous places including all places where notices to employees and members are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since July 31, 2020.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated: Washington, D.C. February 15, 2022



Christine E. Dibble (CED1)
Administrative Law Judge

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join, or assist a union
- Choose representatives to bargain with us on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities.

WE WILL NOT DO ANYTHING TO PREVENT YOU FROM EXERCISING THE ABOVE RIGHTS

WE WILL NOT refuse to bargain collectively and in good faith with the International Brotherhood of Teamsters, Local Union No. 20 (the Union) by failing and refusing to furnish it with requested information that is relevant and necessary to the Union's performance of its duties as the collective-bargaining representative of our unit employees at our Waterville and Maumee, Ohio, and the facilities they may encompass.

WE WILL NOT in any like or related manner fail and refuse to bargain collectively and in good faith with the Union as the servicing representative of the exclusive collective-bargaining representative of our employees in the Unit described above.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed to you by Section 7 of the Act.

WE WILL provide the Union with the information as requested by the Union on about July 31, 2020.

JOHNS MANVILLE CORPORATION
(Employer)

DATED: _____ **BY** _____
(Representative) **(Title)**

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

Patrick V. McNamara Federal Building

1240 East 9th Street, Rm. 1695

Cleveland, OH 44199-2086

Telephone: (216) 522-3715

Fax: (216) 522-2418

Hours of Operation: 8:15 a.m. to 4:45 p.m. ET

**Hearing impaired callers should contact the Federal Relay Service by visiting its website at
www.federalrelay.us/tty**

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/08-CA-270764 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.



THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE.

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (313) 226-3200.